

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

MAHONING CREEK  
HYDROELECTRIC COMPANY, LLC,

Plaintiff/Condemnor,  
v.

PATRICK DALE LONG and  
REAL PROPERTY LOCATED IN WAYNE  
TOWNSHIP, ARMSTRONG COUNTY,  
Map No. 48-076.00-01-09,

Defendants/Condemnee.

Civil Action No. 1:13cv36

**COMPLAINT IN CONDEMNATION  
AND DECLARATION OF TAKING**

Plaintiff Mahoning Creek Hydroelectric Company, LLC (“Condemnor” or “Mahoning Creek”), by and through its undersigned counsel, hereby submits the following Complaint in Condemnation and Declaration of Taking against Defendants Patrick Dale Long (“Condemnee”) and Real Property Located In Wayne Township, Armstrong County, Pennsylvania, Map No. 48-076.00-01-09 (the “Subject Property”), and hereby declares as follows.

**PARTIES**

1. Plaintiff/Condemnor is Mahoning Creek Hydroelectric Company, LLC, an Ohio Limited Liability Company with offices at 5425 Wisconsin Avenue, Suite 600, Chevy Chase, Maryland 20815. The Condemnor is a licensee of the Federal Energy Regulatory Commission, as defined in 16 U.S.C. § 796.

2. Defendants are Patrick Dale Long, as Condemnee and property owner, and Real Property Located In Wayne Township, Armstrong County, Pennsylvania, that is the subject of the condemnation and taking asserted herein and was conveyed to Patrick Dale Long pursuant to a Warranty Deed dated January 12, 1979 and recorded with the Armstrong County Recorder of Deeds Office at deed book 591 page 808 (referred to herein as the "Subject Property").

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 16 U.S.C. § 814 because these proceedings arise under the Federal Power Act, 16 U.S.C. §§ 791, *et seq.* Condemnee has claimed that he is entitled to more than \$3,000 in compensation for the condemnation and taking asserted herein. The Court has authority to award relief under 28 U.S.C. §§ 1331 and 1338.

4. Venue, personal jurisdiction, and *in rem* jurisdiction over the Condemnee and the Subject Property is proper in this District, under 28 U.S.C. §§ 1391 and 1403 and other applicable law, because, *inter alia*, this the Condemnee resides in this District and owns the Subject Property, which is located in this District.

### **CONDEMNATION AND DECLARATION OF TAKING**

5. The interest in the property hereinafter described is hereby condemned as both a temporary and a permanent easement, pursuant to 16 U.S.C. § 814, as authorized by a February 5, 2013 Written Consent and Resolution of the Sole Member of Mahoning Creek Hydroelectric Company, LLC Authorizing the Commencement of an Eminent Domain Proceeding. A copy of the resolution is attached as Exhibit "A." The original resolution may be examined at the offices of the Condemnor at the above address.

6. The purpose of the condemnation is to construct a road, which will be used to access the site of a hydroelectric power plant being constructed at the existing US Army Corps of Engineers dam on Mahoning Creek in Wayne Township, Armstrong County, Pennsylvania.

7. The property interest condemned over the Subject Property is (1) a temporary easement, thirty (30) feet wide, for the construction of the access road; (2) an exclusive, perpetual easement, twelve (12) feet wide, over, upon, along and across the Condemnee's Subject Property for the operation, use, enjoyment, repair and maintenance of the access road; and (3) vehicular access, ingress, regress and egress to and from the access road as situate on adjoining parcels of land. The Condemnee's Subject Property is designated as Wayne Township Map No. 48-076.00-01-09. The Condemnee's Warranty Deed for the Subject Property and drawings of the Condemnee's Subject Property, which show the location of the access road, are attached hereto as Exhibit "B."

8. Pursuant to this condemnation, the nature of the title acquired in and to the property is an easement. In addition to the drawings set forth in Exhibit B, a plan showing the condemned property may be inspected at the address of the attorney for the Condemnor.

9. Condemnor, immediately following the filing hereof, shall file a Notice of Complaint in Condemnation and Declaration of Taking with the Recorder of Deeds Office, Armstrong County, Pennsylvania, and shall serve a Notice of Complaint in Condemnation and Declaration of Taking upon the Condemnee and any identified mortgage or lien holders on the Subject Property.

10. The Condemnor files with this Complaint for Condemnation and Declaration of Taking a bond, without surety, pursuant to the Pennsylvania Eminent Domain Code, 26 Pa.C.S.A. § 303, and in accord with the incorporation of state law provided for in 16 U.S.C. §

814. Just compensation is made or secured by the filing of the bond. A copy of the bond is attached as Exhibit "C."

WHEREFORE, Plaintiff/Condemnor Mahoning Creek Hydroelectric Company, LLC, by and through its undersigned counsel, respectfully requests that the Court enforce this condemnation and taking, grant to Plaintiff/Condemnor any and all just and proper relief, and determine appropriate compensation to Condemnee or others, if any, by trial to the Court, by appointed of a commission or board of views, or by jury, as appropriate.

Respectfully submitted,

Date: February 6, 2013

/s/ J. Alexander Hershey  
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